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2
3 UNITED STATES DISTRICT COURT
4 DISTRICT OF NEVADA

5 * * *

6 Duhjuan L. Miller,

7 Plaintiff,

8 v.

9 NV Energy and Mike Cole,

10 Defendants.

Case No. 2:23-cv-00584-APG-DJA

Order

11 Under 28 U.S.C. § 1915 Plaintiff is proceeding in this action *pro se* and *in forma*
12 *pauperis*. (ECF No. 6). Plaintiff also submitted an amended complaint. (ECF No. 9). Because
13 the Court finds that Plaintiff's complaint does not properly assert sufficient facts, it dismisses his
14 complaint with leave to amend.

15 **I. Legal standard.**

16 Upon granting an application to proceed *in forma pauperis*, courts additionally screen the
17 complaint under § 1915(e). Federal courts are given the authority to dismiss a case if the action is
18 legally "frivolous or malicious," fails to state a claim upon which relief may be granted, or seeks
19 monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915(e)(2).
20 When a court dismisses a complaint under § 1915, the plaintiff should be given leave to amend
21 the complaint with directions as to curing its deficiencies, unless it is clear from the face of the
22 complaint that the deficiencies could not be cured by amendment. *See Cato v. United States*, 70
23 F.3d 1103, 1106 (9th Cir. 1995).

24 Rule 12(b)(6) of the Federal Rules of Civil Procedure provides for dismissal of a
25 complaint for failure to state a claim upon which relief can be granted. Review under Rule
26 12(b)(6) is essentially a ruling on a question of law. *See Chappel v. Lab. Corp. of Am.*, 232 F.3d
27 719, 723 (9th Cir. 2000). A properly pled complaint must provide a short and plain statement of
28 the claim showing that the pleader is entitled to relief. Fed.R.Civ.P. 8(a)(2); *Bell Atlantic Corp. v.*

1 *Twombly*, 550 U.S. 544, 555 (2007). Although Rule 8 does not require detailed factual
2 allegations, it demands “more than labels and conclusions” or a “formulaic recitation of the
3 elements of a cause of action.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citing *Papasan v.*
4 *Allain*, 478 U.S. 265, 286 (1986)). The court must accept as true all well-pled factual allegations
5 contained in the complaint, but the same requirement does not apply to legal conclusions. *Iqbal*,
6 556 U.S. at 679. Mere recitals of the elements of a cause of action, supported only by conclusory
7 allegations, do not suffice. *Id.* at 678. Secondly, where the claims in the complaint have not
8 crossed the line from conceivable to plausible, the complaint should be dismissed. *Twombly*, 550
9 U.S. at 570. Allegations of a *pro se* complaint are held to less stringent standards than formal
10 pleadings drafted by lawyers. *Hebbe v. Pliler*, 627 F.3d 338, 342 & n.7 (9th Cir. 2010) (finding
11 that liberal construction of *pro se* pleadings is required after *Twombly* and *Iqbal*).

12 Federal courts are courts of limited jurisdiction and possess only that power authorized by
13 the Constitution and statute. *See Rasul v. Bush*, 542 U.S. 466, 489 (2004). Under 28 U.S.C.
14 § 1331, federal courts have original jurisdiction over “all civil actions arising under the
15 Constitution, laws, or treaties of the United States.” Cases “arise under” federal law either when
16 federal law creates the cause of action or where the vindication of a right under state law
17 necessarily turns on the construction of federal law. *Republican Party of Guam v. Gutierrez*, 277
18 F.3d 1086, 1088-89 (9th Cir. 2002). Whether federal-question jurisdiction exists is based on the
19 “well-pleaded complaint rule,” which provides that “federal jurisdiction exists only when a
20 federal question is presented on the face of the plaintiff’s properly pleaded complaint.”
21 *Caterpillar, Inc. v. Williams*, 482 U.S. 386, 392 (1987). Under 28 U.S.C. § 1332(a), federal
22 district courts have original jurisdiction over civil actions in diversity cases “where the matter in
23 controversy exceeds the sum or value of \$75,000” and where the matter is between “citizens of
24 different states.” Generally speaking, diversity jurisdiction exists only where there is “complete
25 diversity” among the parties; each of the plaintiffs must be a citizen of a different state than each
26 of the defendants. *Caterpillar Inc. v. Lewis*, 519 U.S. 61, 68 (1996).

II. Discussion.

Plaintiff alleges that NV Energy and its Chief Financial Officer Mike Cole have failed to respond to documents that Plaintiff sent them. Plaintiff does not otherwise explain why this Court has jurisdiction over his complaint, identify the causes of action he brings against these Defendants, or explain how Defendants are civilly liable for failing to respond to Plaintiff's documents. The Court thus dismisses Plaintiff's amended complaint without prejudice and with leave to amend.

IT IS FURTHER ORDERED that the amended complaint (ECF No. 9) is **dismissed without prejudice** for failure to state a claim upon which relief can be granted, with leave to amend. Plaintiff will have until **January 4, 2024** to file an amended complaint if the noted deficiencies can be corrected. If Plaintiff chooses to amend the complaint, Plaintiff is informed that the Court cannot refer to a prior pleading (i.e., the original complaint) to make the amended complaint complete. This is because, generally, an amended complaint supersedes the original complaint. Local Rule 15-1(a) requires that an amended complaint be complete without reference to any prior pleading. Once a plaintiff files an amended complaint, the original complaint no longer serves any function in the case. Therefore, in an amended complaint, as in an original complaint, each claim and the involvement of each Defendant must be sufficiently alleged. **Failure to comply with this order will result in the recommended dismissal of this case.**

IT IS FURTHER ORDERED that the Clerk of Court is kindly directed to mail Plaintiff a copy of this order.

DATED: December 5, 2023

DANIEL J. ALBREGTS
UNITED STATES MAGISTRATE JUDGE